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A policy statement recommends application of the principles of academic freedom and civil liberties to the secondary schools. Teachers' rights are discussed in terms of (1) appointments and dismissals, (2) loyalty oaths, (3) curriculum, (4) selection of texts and supplementary instructional resources, (5) freedom to teach controversial issues, (6) freedom to discuss school policies, (7) organizational activities, (8) political activities, (9) personal rights and freedoms, and (10) the rights of administrators. Students' rights are discussed with respect to (1) freedom of expression and communication, (2) freedom of association, (3) freedom of assembly and the right to petition, (4) student government, (5) student discipline, (6) personal appearance, (7) freedom from discrimination, and (8) the rights of married and pregnant students. An appendix lists constitutional amendments relevant to standards of academic freedom. (TT)

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academic freedom

in the secondary schools

EA 001 843

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AMERICAN CIVIL LIBERTIES UNION ■ 156 FIFTH AVENUE ■ NEW YORK, ■ N.Y. 10010

The publication of this statement is a tribute to the pioneering efforts of Dr. Sidney Barnett, who served as the first chairman of the Subcommittee on the Rights of Students and Teachers in Secondary Schools, from 1962 until his untimely death in 1963. In his memory, the post of chairman was not filled during the remainder of the subcommittee's labors. Dr. Barnett, a scholar, a teacher, an educational administrator, and an activist in the causes of civil liberties, labor and international understanding, was a steadfast defender of the freedom to inquire, the freedom to think independently, the freedom to learn, and the freedom to teach without restraints.

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This pamphlet was prepared by a special committee of the Academic Freedom Committee consisting of Ernestine Friedl, August Gold, Norman I. Klein, S. Jay Levy, Robert J. Schaefer, Abraham Venit, and Samuel Hendel. The ACLU expresses its gratitude to the many secondary school educators throughout the country who read the pamphlet in draft form and gave the committee the benefit of their views.

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preface

This pamphlet is the latest in a series of policy statements which have been adopted by the American Civil Liberties Union over the course of the last decade. It is intended to supplement "Academic Freedom, Academic Responsibility, and Academic Due Process" (September 1966) and to apply to secondary schools the principles and practices recommended in "Academic Freedom and Civil Liberties of Students in Colleges and Universities" (March 1965).

No formulas or prescriptions will fit all cases and problems. The policies set forth in this pamphlet are offered, therefore, as recommended guidelines, not as a body of established principles.

Although this is the first Academic Freedom Committee pamphlet devoted solely to civil liberties in secondary schools, the ACLU has long been active in preserving and fostering constitutional freedoms in schools below the college level. It has intervened with administrations on behalf of faculty members and students whose rights to free expression, fair treatment and non-discrimination have been threatened or violated. In the courts, it has contested teacher and student loyalty oaths, "released time" programs, mandatory flag salutes, censorship of publications, and religious exercises and prayers in the schools. It has opposed legislation which restricts academic freedom and supported legislation advancing freedom in education.

The principles and policies set forth in this pamphlet are meant for all secondary schools, private as well as public. The application of specific policies may be modified in accordance with the stated mission of private schools, but the central principles of freedom and order are of general application. In general, too, the principles of academic freedom and civil liberties of teachers and students in colleges and universities are applicable to secondary schools. There are, however, sufficient differences between the two levels of education to warrant a separate discussion of the secondary schools.

First, the primary functions of the secondary school as a transmitter of knowledge and as a force for the inculcation of the community's culture contrasts with the greater emphasis on research and enhancement of knowledge characteristic of the colleges and universities. This closer affiliation of the secondary school with the local community and its values militates against the system's ability to view itself as an independent academic community; a conception which strongly influences colleges and universities. Second, for all secondary schools the relative immaturity of the students also requires greater prudence in the extension of freedom to them than seems necessary in higher educational institutions.

It is especially because these differentiating characteristics of secondary schools lead administrators to emphasize the need for order rather than the need for freedom, that the American Civil Liberties Union is stressing the importance of applying the principles of academic freedom and civil liberties to the secondary schools. If each new generation is to acquire a feeling for civil liberties, it can do so only by having a chance to live in the midst of a community where the principles are continually exemplified. For young people, the high school should be such a community.

In practice this means, first, that school administrators should widen the area of teacher and student initiative and responsibility, and should accept and act upon as broad a construction of the rights of teachers and students as is compatible with their responsibilities. It should be possible to strike a balance between the principle of order and that of liberty, well within the outer limits where the one approaches regimentation and the imposition of authoritarian discipline, on the one hand, and license and anarchy on the other.

Second, that aspect of American academic tradition which stresses the free contest of ideas should be a vital element both in the development of the curriculum and in classroom teaching. Neither outside officials nor school administrators should permit limitation of expression of points of view to those currently acceptable in the locality, or the region, or even the country. Contemporary accepted opinion needs to be transmitted in the secondary schools, but never exclusively.

No step should be neglected which will enable students to hear and to learn to evaluate strange and unpopular ideas.

Third, opportunities for free speech and assembly should be accorded our students as early as is practicable. Only by practicing some of the rights of citizens, can they grow to the political and social maturity consonant with democracy.

teachers' rights

APPOINTMENTS AND DISMISSALS

A teacher should be appointed solely on the basis of teaching ability and competence in his professional field without regard to such factors as sex, race, nationality, creed, religious or political belief or affiliation, or behavior not demonstrably related to the teaching function. Continuation of appointment and the granting of tenure after a reasonable probationary period should depend upon performance as a teacher and scholar. Certain independent or church-affiliated schools with close denominational identification may, in making appointments, give special consideration to their distinctive purpose, specifically and narrowly defined, and publicly proclaimed. Nevertheless, the values of academic freedom are paramount in such institutions as in others.

A teacher should not be dismissed for holding and expressing opinions, religious, political, social or otherwise. He may be dismissed only for demonstrable incompetence, lack of professional integrity, abuse of the academic process or when his behavior affects his professional performance in a demonstrably deleterious fashion. Prior to dismissal a teacher must be accorded an impartial hearing, the right of counsel and other protections of his rights that are afforded by "due process" proceedings. (A statement of desirable procedures which are applicable appears in the ACLU pamphlet, "Academic Freedom, Academic Responsibility, Academic Due Process.")

LOYALTY OATHS

So-called loyalty oaths usually focus on disclaimer affidavits or negative oaths which call for denial of membership in, or association with, certain proscribed organizations, usually of the extreme left-wing or right-wing. The ACLU has long opposed such oaths because their criteria inhibit the free exercise of speech and association and act as instruments for conformity. They are an affront to the dignity of the individual. In many instances, they violate due process because of vagueness. Moreover, such oaths are, in addition, unfairly discriminatory in their application to teachers who frequently are singled out from other professions in being required to take such an oath.

In recent years, the Supreme Court has struck down negative loyalty oath laws in a number of states on the grounds that the statutes were unconstitutionally vague. Delivering the majority opinion in the case of *Keyishian v. the Board of Regents of New York,** in a 1967 decision, Mr. Justice Brennan said: "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. . . ."

There are also positive oaths. Both the federal and the state constitutions require certain classes of office-holders to swear or affirm that they will support the Constitution of the United States. Sometimes these oaths include allegiance to a state's constitution and laws as well. Their extension, by legislative or administrative action, to other classes of employees, and to recipients of government benefits, is of frequent occurrence. Recently, the United States Supreme Court has affirmed lower court decisions that found no infirmity in requiring such professions of support from teachers in tax-exempt private institutions in New York,** or from faculty and employees of the state university of Colorado.***

Despite the present position of the Supreme Court, the ACLU is opposed to the imposition of oaths that in content or coverage go beyond what is required by the federal Constitution in Article VI: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

We oppose the application of positive oaths to other groups, such as teachers, because:

1. They may have an inhibiting effect on freedom of belief and expression.
2. Like more elaborate loyalty and disclaimer oaths, they are probably inefficacious in detecting or curbing disloyal conduct.
3. Experience shows that, starting from simple constitutional oaths, lawmakers tend to add on disclaimer provisions and punitive sanctions, of a clearly unconstitutional character, as declared by the Supreme Court in another signifi-

**Keyishian* v. *the Board of Regents of New York*, 385 U.S. 589 (1967)
***Knight* v. *Regents of the University of the State of New York*, 269 F. Supp. 339 (S.D.N.Y. 1967), affirmed without opinion, 390 U.S. 36 (1968)
****Hosack* v. *Smiley*, 276 F. Supp. 876 (D. Colo. 1967), affirmed without opinion, 36 USLW 3411 (1968)

cant line of recent decisions.*

4. When certain classes of employees are singled out and required to take such oaths, as for example, teachers, the requirement is discriminatory and demeaning.

In any case, when teachers who are aliens are legally employed or receive benefits, they should not be required to take such oaths when they may be inconsistent with the alien's obligations to his own country.

CURRICULUM

The professional staff, by virtue of its training and experience, has the right and responsibility to establish the curriculum, subject to the approval of boards of education and state departments of education. It is expected that members of the staff will be guided at all times by the highest professional standards of scholarship and methodology, applied with an appropriate sensitivity to the community's educational needs and the expressed views of its citizens. Their professional preparation, however, qualifies them to establish what shall be included in the curriculum and when and how it shall be taught, free from dictation by community groups or individual citizens.

Although the professional staff must develop through general agreement the objectives, content and methods of the curriculum, the individual classroom teacher should be given reasonable scope in their implementation. The teacher's professional integrity requires that he not present unorthodox views in such a manner as to imply that they are generally accepted. It is his responsibility to maintain a free interchange of ideas in the classroom.

SELECTION OF TEXTS AND SUPPLEMENTARY INSTRUCTIONAL RESOURCES

Selection of text books should be on an "open list" basis, allowing supervisors and teachers in schools a wide choice of materials to meet particular needs. Listing of acceptable texts should be the function of a selection committee composed of supervisors and teachers. Text books should be appraised on the basis of accuracy and adequacy of scholarship, promotion of the curricular objectives, and freedom from unfounded or prejudiced opinions on racial, cultural, religious, or political matters.

The use of supplementary matter other than text should be left to the judgment of the individual teacher. The classroom should be open to outside speakers, whose special competence the teacher may want to use in the development of subjects relevant to the curriculum.

When an issue is controversial, the objective should be to offer varied points of view. It is not essential that any single work present all sides of a question; other resources may be counted upon to maintain a balance so long as they are freely available. Where parents as individuals, or parent or other community groups, raise the question of suitability of any material out of concern for maturity level, morality, patriotism, literary merit, etc., the decision as to its acceptability should be vested in a representative professional committee.

*Starting with *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961), and continuing through *Whitehill* v. *Elkins*, 389 U.S. 54 (1967)

FREEDOM TO TEACH CONTROVERSIAL ISSUES

"Democracy is a way of life that prizes alternatives. Alternatives mean that people must make choices. Wisdom with which to make choices can come only if there are freedom of speech, of press, of assembly, and of teaching. They protect the people in their right to hear, to read, to discuss, and to reach judgments according to individual conscience. Without the possession and the exercise of these rights, self-government is impossible. In defending freedom to learn and freedom to teach we are defending the democratic process itself." (1952 Committee on Academic Freedom, National Council for the Social Studies). The freedom to teach controversial issues is a critical test of the teacher's freedom in the classroom. Our democratic culture, committed to freedom and to respect for the individual, is not monolithic in its values. By discussion of controversial issues, teachers can help students to analyze issues, to investigate and consider various positions, to keep an open mind and weigh alternatives, to organize and present arguments, to draw intelligent conclusions and thus contribute to the development of effective democratic citizenship.

When a controversial issue is studied, conflicting points of view should be explored. The teacher has the right to identify and express his own point of view in the classroom as long as he indicates clearly that it is his own.

FREEDOM OF DISCUSSION OF SCHOOL POLICIES

At faculty conferences and meetings teachers have the right to express opinions on school policies and conditions, make declarations and vote on issues. They should feel free to dissent from the views of the administration and the majority of teachers, if they are so inclined. Teachers should be granted the opportunity to explain their positions. There should at no time be any reprisals such as dismissal, the withholding of salary increases or the assignment of undesirable programs.

Faculty conferences and teachers' meetings should ordinarily be preceeded by a distribution of the agenda and teachers should have an opportunity to place items on the agenda.

Teachers have the right to meet privately, to meet without the presence of the administrative staff, and to disseminate their views either as individuals or groups.

TEACHERS AND ORGANIZATIONAL ACTIVITIES

With a view to the maintenance of professional standards and academic rights, teachers should be completely free to create and maintain within individual schools, committees or councils to represent them in relationships with the school administration. These committees or councils should be accorded every facility to make possible the determination of teacher opinion and for its presentation to the administration.

Like other occupational groups in an industrial society concerned with the maintenance of living standards, teachers should be free to join unions of their own choosing, whether locally organized or part of a nation-wide federation. The right to participate in union activity should include the right to strike. A teachers' strike cannot ordinarily be interpreted as endangering the public health, safety, or welfare. Since they are professionals performing a public service,

it is assumed that teachers will resort to strikes only when other legitimate means of redress have failed.

TEACHERS AND POLITICAL ACTIVITY

A teacher is free to participate as an individual in political activities. He should be free to fulfill his duties and responsibilities as a citizen by participating actively in the affairs of the political party of his choice, by attending party functions, contributing to support of the party, campaigning in the community for its candidates, serving as an official in the party, becoming a candidate of the party for public office and holding such office.

His political activity, however, must not compromise his professional integrity. He must not misuse his professional position to pervert the academic process in the interests of his own political ambitions or those of a political group.

TEACHERS' INDIVIDUAL AND PERSONAL RIGHTS

The teacher's individual and personal rights and freedoms outside the academic setting are no less than those of other citizens. Generally, he should enjoy freedom to go where he will, to associate with whomever he chooses, to dress as he pleases, to engage in whatever sports, recreations, pastimes, or supplementary lawful gainful employment he favors, to affiliate with whatever groups he finds a common purpose, to join whatever religious group his conscience dictates, or to refrain from any or all religious practices, and to espouse whatever cause or idea appeals to him. In sum, a teacher should be free to conduct himself as he sees fit unless it can be shown that his behavior is affecting his professional performance in a demonstrably deleterious manner.

THE RIGHTS OF ADMINISTRATORS

If a climate of freedom is to be maintained in the schools, those who administer, direct and advise, must enjoy essentially the same liberties which are vouchsafed to the teachers who function directly in the classrooms. The rights here outlined apply to all members of the professional educational staff, including those in supervisory and administrative positions. However, insofar as a school board has the right to expect its top administrators to carry out its designated policy and the right to dismiss them if they fail to do so, these rights do not apply to the administrative official or officials who are appointed by and directly responsible to the school board. These administrators, however, are entitled to retain their teaching positions, if they serve in both capacities.

students' rights

If secondary school students are to become citizens trained in the democratic process, they must be given every opportunity to participate in the school and in the community with rights broadly analogous to those of adult citizens. In

this basic sense, students are entitled to freedom of expression, of assembly, of petition, and of conscience, and to due process and equal treatment under the law. The American Civil Liberties Union has already described how such freedoms appertain to college students in its pamphlet on "Academic Freedom and Civil Liberties for Students in Colleges and Universities." But the difference in the age range between secondary school and college students suggests the need for a greater degree of advice, counsel, and supervision by the faculty in the high schools than is appropriate for the colleges or universities. From the standpoint of academic freedom and civil liberties, an essential problem in the secondary schools is how best to maintain and encourage freedom of expression and assembly while simultaneously inculcating a sense of responsibility and good citizenship with awareness of the excesses into which the immaturity of the students might lead.

It is the responsibility of faculty and administration to decide when a situation requires a limit on freedom for the purpose of protecting the students and the school from harsh consequences. In exercising that responsibility, certain fundamental principles should be accepted in order to prevent the use of administrative discretion to eliminate legitimate controversy and legitimate freedom. The principles are:

(1) A recognition that freedom implies the right to make mistakes and that students must therefore sometimes be permitted to act in ways which are predictably unwise so long as the consequences of their acts are not dangerous to life and property, and do not seriously disrupt the academic process.

(2) A recognition that students in their schools should have the right to live under the principle of "rule by law" as opposed to "rule by personality." To protect this right, rules and regulations should be in writing. Students have the right to know the extent and limits of the faculty's authority and, therefore, the powers that are reserved for the students and the responsibilities that they should accept. Their rights should not be compromised by faculty members who while ostensibly acting as consultants or counsellors are, in fact, exercising authority to censor student expression and inquiry.

(3) A recognition that deviation from the opinions and standards deemed desirable by the faculty is not *ipso facto* a danger to the educational process.

FREEDOM OF EXPRESSION AND COMMUNICATION

Primary liberties in a student's life have to do with the processes of inquiry and of learning, of acquiring and imparting knowledge, of exchanging ideas. There must be no interference in the school with his access to, or expression of, controversial points of view. No student should suffer any hurt or penalty for any idea he expresses in the course of participation in class or school activities.

The right of every student to have access to varied points of view, to confront and study controversial issues, to be treated without prejudice or penalty for what he reads or writes, and to have facilities for learning available in the school library and the classroom may not be derogated or denied.

1. Learning materials

Toward these ends policies should be adopted in writing establishing solely educational criteria for the selection and purchase of class and library materials

including books, magazines, pamphlets, films, records, tapes and other media. These policies should provide principles and procedures for the selection of materials and for the handling of complaints and grievances about these materials.

The removal from the school library or the banning of material alleged to be improper imposes a grave responsibility. It should be exercised, if at all, with the utmost of circumspection and only in accordance with carefully established and publicly promulgated procedures. (Such procedures are detailed in the ACLU pamphlet, "Combatting Undemocratic Pressures on Schools and Libraries – A Guide for Local Communities.")

2. Forums

Generally speaking, students have the right to express publicly and to hear any opinion on any subject which they believe is worthy of consideration. Assemblies and extra-curricular organizations are the more obvious, appropriate forums for the oral exchange of ideas and offer the opportunity for students to hear views on topics of relatively specialized interest. Whatever the forum, the faculty should defend the right of students to hear and participate in discussions of controversial issues. Restrictions may be tolerated only when they are employed to forestall events which would clearly endanger the health or safety of members of the school community or clearly and imminently disrupt the educational process. Education, it may be noted, should enable individuals to react to ideas, however distasteful, in rational and constructive ways.

The education of young people to participate in public presentations of opinions and to choose wisely among those that are offered suggests that they help plan assembly programs. The students should have the responsibility for planning other forums, especially those offered by extracurricular organizations: for selecting the topics, choosing the speakers, and determining the method of presentation.

Students may choose speakers from their own ranks, from the faculty, and from outside the school. The community at large may provide speakers who have knowledge and insights that might not otherwise be available to students; it may introduce to the school persons whose presence enriches the educational experience. Controversies that are sometimes involved in inviting outside speakers should not deter faculty advisors from encouraging their presence at school.

Every student has the right to state freely his own views when he participates in a discussion program. Faculty members may advise the students on such matters as the style, appropriateness to the occasion, and the length of their presentations and on the avoidance of slander, but they must not censor the expression of ideas. To foster the free expression of opinions, students participating on panels should have wide latitude to state the differences in their views. For the same reason, questions from members of student audiences are ordinarily desirable and should be encouraged by arranging question periods of reasonable length at the end of talks.

3. Student Publications

The preparation and publication of newspapers and magazines is an exercise in freedom of the press. Generally speaking, students should be permitted and encouraged to join together to produce such publications as they wish. Faculty advisors should serve as consultants on style, grammar, format and suitability of the materials. Neither the faculty advisors nor the principal should prohibit

the publication or distribution of material except when such publication or distribution would clearly endanger the health or safety of the students, or clearly and imminently threaten to disrupt the educational process, or might be of a libelous nature. Such judgment, however, should never be exercised because of disapproval or disagreement with the article in question.

The school administration and faculty should ensure that students and faculty may have their views represented in the columns of the school newspaper. Where feasible, they should permit the publication of multiple and competing periodicals. These might be produced by the student government, by various clubs, by a class or group of classes, or by individuals banded together for this specific purpose. The material and equipment for publication such as duplicating machines, paper and ink should be available to students in such quantity as budget may permit.

The freedom to express one's opinion goes hand in hand with the responsibility for the published statement. The onus of decision as to the content of a publication should be placed clearly on the student editorial board of the particular publication. The editors should be encouraged through practice, to learn to judge literary value, newsworthiness, and propriety.

The right to offer copies of their work to fellow students should be accorded equally to those who have received school aid, and to those whose publications have relied on their own resources.

The student press should be considered a learning device. Its pages should not be looked upon as an official image of the school, always required to present a polished appearance to the extramural world. Learning effectively proceeds through trial and error, and as much or more may sometimes be gained from reactions to a poor article or a tasteless publication as from the traditional pieces, groomed carefully for external inspection.

4. School communications

Guarantees of free expression should be extended also to other media of communication: the public address system, closed-circuit television, bulletin boards, handbills, personal contact. Reasonable access should be afforded to student groups for announcements and statements to the school community. This should include the provision of space, both indoor and outdoor, for meetings and rallies.

The school community, i.e., the administration, faculty and the student organization, has the right to make reasonable regulations as to manner, place and time of using these communication media.

The electronic media are monopolistic by nature, and their audiences are captive. When these are used as vehicles for the presentation of opinions, the guarantees and procedures applied to school assemblies should similarly be invoked with respect to choice of topics, balance of participants and freedom of expression.

5. Restrictions on political thought

Not only should the student be guaranteed freedom to inquire and to express his thoughts while in the school; he should also be assured that he will be free from coercion or improper disclosure which may have ill effects on his career.

a. **Loyalty oaths**

Loyalty oaths are, by their inherent nature, a denial of the basic premises of American democracy. Whether imposed by the school itself, or by an external political authority, oaths required as a condition for enrollment, promotion, graduation, or for financial aid, violate the basic freedoms guaranteed to every individual by the Bill of Rights.

b. **Inquiries by outside agencies**

The solicitation by prospective private, governmental or other outside agencies or persons of information about students is a practice in which there are inherent dangers to academic freedom. To answer questions on a student's character, reliability, conduct, and academic performance is part of the school's responsibility. But questions about a student's values and opinions may be deemed invasions of educational privacy and impingements on academic freedom. A teacher's ability to resist such invasions of privacy will be strengthened if the school proscribes the recording of student opinions and adopts policies on responding to outsiders' questions that safeguard academic freedom.

Even in schools that have adopted policies to prevent the recording and disclosure of individuals' beliefs, there will be times when the teacher has to rely on his own judgment in deciding to reply or not to reply to questions about students. Both educational and personal liberty considerations should help guide the faculty member faced with inquiries that may invite the disclosure of religious, political, social, and other opinions and beliefs. Education often calls for probing, hypothesizing, and thinking out loud. Reports to persons outside the school on students' opinions therefore threaten the learning process. Moreover, an atmosphere conducive to an understanding of freedom and of the need for an interplay of ideas in a free society will hardly prevail if teachers report to outsiders on opinions expressed by their students.

The opinions and beliefs of secondary school students, although often stated with great enthusiasm, are highly subject to change. Many youths have great eagerness, exuberance, idealism, and propensity for adventure, but limited experience. The community, its laws, its parents, and the schools themselves therefore recognize that students are not as accountable for their actions as adults. Consistent with this attitude, schools should understand this difference and refrain from answering questions about students' beliefs.

6. Freedom of religion and conscience

All students are entitled to the First Amendment guarantees of the right to practice their own religion or no religion. Under the terms of the amendment, as repeatedly interpreted by the Supreme Court, any federal, state, or local law or practice is unconstitutional if it has the effect of extending to religion the mantle of public sponsorship, either through declaration of public policy or use of public funds or facilities.

Students' rights in this area are protected by judicial decisions which have found the following practices unconstitutional:

a. The recitation of any form of prayer as a group exercise,
b. The reading of the Bible as a form of worship; mandatory Bible instruction; use of schools for Bible distribution,

c. Sectarian holiday observances,
d. The showing of religious movies in class or assembly exercises,
e. The use of public school facilities for religious instruction, either within school hours or for after-school classes, whether by church or lay groups.

The teaching of religion should be distinguished from teaching factually about religion as, for example, an aspect of world history or of social sciences. Even in teaching about religion, the younger the child, the more wary the teacher must be of indoctrination. Certainly, public schools may explain the meaning of a religious holiday, as viewed by adherents of the religion of which it is a part, but may not seek to foster a religious view in the classroom or otherwise.

Although a salute to the flag and oath of allegiance are commonly accepted practices in school assembly exercises, exemptions should be granted to a student whose religious scruples or other principled convictions lead him to refuse to participate in such exercises. The Supreme Court has held that the protection of freedom of religion under the First Amendment encompasses such exemption on grounds of religious belief. There should be no distinction in this respect between student objection based on religious conviction and that based on non-religious grounds of conscience.

FREEDOM OF ASSOCIATION

The right to individual free expression implies in a democracy the right to associate for the exchange of opinion or the statement of ideas held in common.

1. Extracurricular activities

Students should be free to organize associations within the school for political, social, athletic, and other proper and lawful purposes, provided that no such group denies membership to any student because of race, religion or nationality, or for any reasons other than those related to the purpose of the organization (i.e., a French club requirement for competence in French). The fact of affiliation with any extramural association should not in itself bar a group from recognition, but disclosure of such fact may be required. Any group which plans political action or discussion, of whatever purpose or complexion and whether or not affiliated with a particular legal party, should be allowed to organize and be recognized in any educational institution. The administration should not discriminate against a student because of membership in any such organization.

Student organizations are entitled to faculty advisors of their own selection. If no volunteer is available, a faculty member should be assigned to provide the required supervision, in order that the organization may exercise its right to function in the school.

The use of rooms and other facilities should be made available, as far as their primary use for instructional purposes permits, to recognized student organizations. Bulletin boards and access to school-wide communications systems should be provided for the use of student organizations, and they should be permitted to circulate notices and leaflets. The legitimate power of school authorities to safeguard school property should not be misused to suppress a poster or piece of literature by reason of objections to its content.

The nature and type of programs, projects and procedures of any student orga-

nization should be within the province of student decision, subject only to emergency ban by student government or principal in the event that a proposed activity clearly threatens the health and safety of the students, or clearly and immediately threatens to disrupt the educational process. Such a ban should not become permanent unless its justification is established through open hearings and argument.

A student organization should be permitted to use the name of the school as part of its own name, and to use this name in all activities consistent with its constitution. The school may adopt such regulations as will prevent any student organization from representing overtly or by inference that its views are sanctioned by the school. Restrictions may fairly be placed on the use of the school name in extramural activities (such as participation in public demonstrations or parades), but any such restrictions should be without discrimination in respect to all student organizations.

The administration and the faculty should not discriminate against any student because of his membership or participation in the activities of any extracurricular student association.

2. Out-of-school activities

The school has no jurisdiction over its students' non-school activities, their conduct, their movements, their dress and the expression of their ideas. No disciplinary action should be taken by the school against a student for participation in such out-of-school activities as political parties and campaigns, picketing and public demonstrations, circulation of leaflets and petitions, provided the student does not claim without authorization to speak or act as a representative of the school or one of its organizations. When a student chooses to participate in out-of-school activities that result in police action, it is an infringement of his liberty for the school to punish such activity, or to enter it on school records or report it to prospective employers or other agencies, unless authorized or requested by the student. A student who violates any law risks the legal penalties prescribed by civil authorities. He should not be placed in jeopardy at school for an offense which is not concerned with the educational institution.

FREEDOM OF ASSEMBLY AND THE RIGHT TO PETITION

The right "peaceably to assemble" is constitutionally bracketed with the right to "petition the government for a redress of grievances." Accordingly, individual students and student organizations should be permitted to hold meetings in school rooms or auditoriums, or at outdoor locations on school grounds, at which they should be free to discuss, pass resolutions, and take other lawful action respecting any matter which directly or indirectly concerns or affects them, whether it relates to school or to the extramural world. Nor should such assemblages be limited to the form of audience meetings; any variety of demonstration, whether it be a picketline, a "walk," or any other *peaceful* type, should be permissible. The school administration is justified in requiring that demonstrations or meetings be held at times that will not disrupt classes or other school activities and in places where there will be no hazards to persons or property; it also may require advance notice when necessary to avoid conflicts and to arrange for proper protection by faculty or police.

The right to distribute printed material, whether produced within or outside the school, should always be recognized, subject only to limitations designed to prevent littering, except when such distribution would clearly endanger the health or safety of the students, or clearly and imminently threaten to disrupt the educational process, or might be of a libelous nature. But the administration may require that the distributor be a student enrolled in the school.

In general, subject only to reasonable restrictions of time and place, students should be free also to collect signatures on petitions concerning either school or out-of-school issues. Neither the administration nor the faculty should have the right to screen either the contents or the wording of the petitions; they should receive them when presented and give their fullest consideration to the proposals therein.

Similarly, the wearing of buttons or badges, armbands or insignia bearing slogans or admonitions of any sort should generally be permitted as another form of expression.* No teacher or administrator should attempt to interfere with this practice on the grounds that the message may be unpopular with any students or faculty, or even with the majority of either group. The exercise of one or another of these techniques of expression may, under certain circumstances, clearly and imminently constitute a danger to peace or clearly and imminently threaten to disrupt the educational process. Such a situation might require staying action by the administration, similar to a temporary injunction, and subject to revocation if and when a hearing determines that the facts no longer warrant it. Interference in this way with the exercise of student rights should seldom occur, and should be undertaken with the greatest reluctance and only when accompanied by careful explanation.

STUDENT GOVERNMENT

The functions and powers of student government organizations, and the manner of selection of their officers, as well as the qualifications for office, are matters to be determined as the respective school communities think desirable, but certain rights should be guaranteed within the structure of any student government, if it is to fulfill its role as an educational device for living in a democracy.

1. The organization, operation and scope of the student government should be specified in a written constitution, formulated with effective student participation.

2. The government should function with scrupulous regard for all constitutional provisions, which should be changed only by a prescribed process of amendment in which there should be effective student participation.

3. No constitutional provision, by-law or practice should permit decisions, including expenditures of student organization funds, to be made exclusively by the faculty or administration.

4. All students should have the right to vote and to hold office.

5. The statements, votes, decisions or actions of a student incident to his role in student government should be judged solely within the sphere of the school civic life, through the medium of electoral action by his peers, or through preestablished constitutional process. Full and free participation in student govern-

*In 1966, a U.S. Court of Appeals upheld the right of Mississippi high school students to wear "freedom buttons" in school "as a means of silently communicating an idea" and therefore legally protected by the First Amendment. (*Burnside* v. *Byars* 363 F.2d 744 1966).

ment should be encouraged by an understanding that neither marks, course credits, graduation, college recommendations, nor other aspects of scholastic life will ever be adversely affected as a consequence of a stand or action with which faculty or administration may disagree. Nor should such penalties ever be invoked for failure to make financial contribution in support of any school activity.

6. In respect to the selection of officers of the student organization:
   a. All students who meet the qualifications fixed by the school constitution should be permitted to be candidates. However, disqualification for a specified period from participation in extracurricular activities, including student government, might in appropriate cases be imposed as a penalty for serious or repeated infractions of school rules.
   b. Candidates should be free to speak without censorship, subject only to equally enforced rules as to the time and place of their speeches.
   c. All candidates should have equal opportunity to publicize their campaigns.
   d. Candidates should be permitted to group into slates or parties, if they so desire.
   e. Voting and vote-counting procedures should make provision for scrutiny by representatives of all candidates.
   f. The candidate chosen by vote of the students should be declared elected, with no faculty veto.
   g. Any electoral rules which may be adopted should apply equally, without discrimination, to all candidates.

STUDENT DISCIPLINE

The regulations concerning appropriate student behavior in the school at large should preferably be formulated by a student-faculty committee. Regulations governing the school as a whole should be fully and clearly formulated, published, and made available to all members of the school community. They should be reasonable. Specific definitions are preferable to such general criteria as "conduct unbecoming a student" and "against the best interests of the school," which allow for a wide latitude of interpretation.

1. The right of due process

To maintain the orderly administration of the school, minor infractions of school discipline may be handled in a summary fashion. In every case a student should be informed of the nature of the infraction with which he is charged. The teacher and/or administrator should bear in mind that an accusation is not the equivalent of guilt, and he should therefore be satisfied of the guilt of the accused student prior to subjecting such student to disciplinary action.

A student's locker should not be opened without his consent except in conformity with the spirit of the Fourth Amendment which requires that a warrant first be obtained on a showing of probable cause, supported by oath or affirmation, and particularly describing the things to be seized. An exception may be made in cases involving a clear danger to health or safety.

The penalties meted out for breaches of school regulations should be commensurate with the offense. They should never take the form of corporal punishment. Punishment for infractions of the code of behavior should bear no relation to

courses, credits, marks, graduation or similar academic areas, except in cases where they relate to academic dishonesty.

Those infractions which may lead to more serious penalties, such as suspension or expulsion from school, or a notation on the record, require the utilization of a comprehensive and formal procedure in order to prevent a miscarriage of justice that could have serious effects on the student and his future. Such hearings should therefore be approached not in terms of meting out punishment but rather as an attempt to find the best solution for the student's needs consistent with the maintenance of order in the school.

The procedure should include a formal hearing and the right of appeal. Regulations and proceedings governing the operation of the hearing panel and the appeal procedure should be predetermined in consultation with the students, published and disseminated or otherwise made available to the student body. Responsibility for the decision reached as a result of the hearing rests solely with the administration. It may seek the opinions and participation of teachers and students in reaching its conclusion.

Prior to the hearing, the student (and his parent or guardian) should be:

a. Advised in writing of the charges against him, including a summary of the evidence upon which the charges are based.

b. Advised that he is entitled to be represented and/or advised at all times during the course of the proceedings by a person of his choosing who may or may not be connected with the faculty or administration of the school and may include a member of the student body.

c. Advised of the procedure to be followed at the hearing.

d. Given a reasonable time to prepare his defense.

At the hearing, the student (his parent, guardian or other representative) and the administrator should have the right to examine and cross-examine witnesses and to present documentary and other evidence in support of their respective contentions. The student should be advised of his privilege to remain silent, and should not be disciplined for claiming this privilege. The administration should make available to the student such authority as it may possess to require the presence of witnesses at the hearing. A full record should be taken at the hearing and it should be made available in identical form to the hearing panel, the administration and the student. The cost thereof should be met by the school.

In those instances where the student is being exposed to a serious penalty because of an accumulation of minor infractions which had been handled in summary fashion, or any instance where evidence of prior infractions so handled is presented at the hearing by the administration, the student (his parent, guardian, or other representative) should be permitted to reopen those charges and present evidence in support of the contention that he was wrongfully accused and/or convicted of the minor infraction.

After the hearing is closed, the panel should adjudicate the matter before it with reasonable promptness and make its findings and conclusions in writing, and make copies thereof available in identical form and at the same time, to the administration and the student. The cost thereof should be met by the school. Punishments should so far as possible avoid public humiliation or embarrassment. Group punishment should be used only if every member of the group is guilty of the infraction. Cruel and unusual punishment should never be imposed.

2. The role of the police in the secondary schools

Where disciplinary problems involving breaches of law are rampant, schools cannot be considered sacrosanct against policemen and the proper function of law officers cannot be impeded in crime detection. Whenever the police are involved in the schools, their activities should not consist of harassment or intimidation. If a student is to be questioned by the police, it is the responsibility of the school administration to see that the interrogation takes place privately in the office of a school official, in the presence of the principal or his representative. Every effort should be made to give a parent the opportunity to be present. All procedural safeguards prescribed by law must be strictly observed. When the interrogation takes place in school, as elsewhere, the student is entitled to be advised of his rights, which should include the right to counsel and the right to remain silent.

PERSONAL APPEARANCE

The matter of acceptable dress and grooming is a frequent issue in schools. Education is too important to be granted or denied on the basis of standards of personal appearance. As long as a student's appearance does not, *in fact,* disrupt the educational process, or constitute a threat to safety, it should be no concern of the school.

Dress and personal adornment are forms of self-expression; the freedom of personal preference should be guaranteed along with other liberties. The reconciliation of the rights of the individual with the needs of the group was well expressed in the decision by California Superior Court Judge W. G. Watson in the case of Myers v. Arcata Union High School District. (1966)*

> The limits within which regulations can be made by the school are that there be some reasonable connection to school matters, deportment, discipline, etc., or to the health and safety of the students. . . . The Court has too high a regard for the school system . . . to think that they are aiming at uniformity or blind conformity as a means of achieving their stated goal in educating for responsible citizenship. . . . [If there are to be some regulations, they] must reasonably pertain to the health and safety of the students or to the orderly conduct of school business. In this regard, consideration should be given to what is really health and safety . . . and what is merely personal preference. Certainly, the school would be the first to concede that in a society as advanced as that in which we live there is room for many personal preferences and great care should be exercised insuring that what are mere personal preferences of one are not forced upon another for mere convenience since absolute uniformity among our citizens should be our last desire.

FREEDOM FROM DISCRIMINATION

No student should be granted any preference nor denied any privilege or right in any aspect of school life because of race, religion, color, national origin, or any other reason not related to his individual capabilities. It is the duty of the administration to prevent discrimination and to avoid situations which may lead to discrimination or the appearance thereof, in all aspects of school life, including the classroom, the lunchroom, the assembly, honors, disciplinary systems, athletics, clubs and social activities.

*Superior Court of California. Humboldt County (unreported)

THE RIGHTS OF MARRIED AND/OR PREGNANT STUDENTS

The right to an education provided for all students by law should not be abrogated for a particular student because of marriage or pregnancy unless there is compelling evidence that his or her presence in the classroom or school does, in fact, disrupt or impair the educational process for other students. This includes the right to participate in all the activities of the school. If temporary or permanent separation from the school should be warranted, the education provided elsewhere should be qualitatively and quantitatively equivalent to that of the regular school, so far as is practicable.

ACADEMIC FREEDOM AND EDUCATION

The academic freedoms set forth in the student section of this pamphlet must be looked upon as more than a line of defense; they are positive elements in the educational process of a democracy. The spirit of these freedoms should permeate the school and their expression should be actively encouraged by faculty and administration. A school which does not respect civil liberties has failed the community, its students and itself.

In 1943, the Supreme Court, in the case of *West Virginia Board of Education* v. *Barnette*,* affirmed the basic concept that no agent of a school board can compel a student to surrender his constitutional rights as a privilege of attending school. The majority opinion stated:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—the Board of Education not excepted. These have of course, important, delicate and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

In 1967, the Supreme Court held, in an 8-1 decision, *In re Gault***, that: ". . . Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

**West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 (1943)

***In re Gault*, 87 S. Ct. 1428 (1967)

appendix

CONSTITUTIONAL AMENDMENTS RELEVANT TO STANDARDS OF ACADEMIC FREEDOM

First Amendment Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Fourth Amendment The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

Seventh Amendment In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Eighth Amendment Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Ninth Amendment The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The foregoing amendments were passed by Congress on September 25, 1789, and ratified by the States on December 15, 1791. The amendment which follows was drawn up after the Civil War and declared to have been ratified on July 28, 1868 in a proclamation by the Secretary of State.

Fourteenth Amendment All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

The American Civil Liberties Union has affiliates in forty-one states and the District of Columbia. These local units of the Union are engaged in a variety of activities relating to academic freedom. Should you wish the address of the affiliate in your area, write to:

AMERICAN CIVIL LIBERTIES UNION

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NEW YORK, NEW YORK 10010